DATUK ONG KEE HUI

v.

SINYIUM MUTIT

FEDERAL COURT, KUALA LUMPUR
LEE HUN HOE CJ (BORNEO)
SALLEH ABAS FJ
GEORGE SEAH J
[CIVIL APPEAL NO. 193 OF 1981]
10 MAY 1982

CONTRACT: *Contract between member of political party and the party - Undertaking to donate allowance paid as member of Dewan Rakyat to party - Agreement to resign from being member of Dewan Rakyat on resignation from party - Contracts illegal as being contrary to public policy - Whether person concerned can sue for damages - Members of Parliament (Remuneration) Act 1980 (Act 237) - Federal Constitution, arts. 51 and 59.*

In this case the respondent was a member of a politicial party and was nominated to stand for a parliamentry constituency. His election expenses were borne by the party. The respondent signed a document undertaking to donate the allowance paid to him as a Member of the Dewan Rakyat to the party. He also agreed that in the event of his doing any act which was seen to be against the interests of the party he would forfeit his seat in the Dewan Rakyat and the party could then submit his letter of resignation, signed by him, to the Speaker.0 of the Dewan Rakyat. The respondent was elected as a member and at first he kept to his undertaking and requested his parliamentary remuneration to be paid to the party. The party in turn gave him a monthly sum of RM300.00. Subsequently he asked the party to increase the allowance to RM600.00 but receiving no reply, he resigned from the party. The party thereupon send the letter of resignation to the Speaker. The result was that the respondent lost his seat in the Dewan Rakyat. He brought an action against the party claiming the refund RM8,024.70 being his parliamentary remuneration retained by the party and the payment of RM41,325.80 being the amount of parliamentary remuneration which he would have received had it not been for the party's submission of the letter of resignation.

Wan Mohamed J in the High Court held that the undertakings were illegal, but held notwithstanding that the respondent was entitled to the refund of RM8,024.70 and to the special damages of RM41,325.80, subject to the deduction of RM15,000.00 for the election expenses. See (1982) 1 MLJ 36. The appellant appealed.

The Federal Court allowed the appeal. Salleh Abas, F.J. in giving the judgment of the Federal Court said:-

> To us in whatever way we look at the appeal and the cross appeal we are of the opinion that the respondent claim must be dismissed. If the arrangement was not illegal and therefore valid, it goes without saying that what were done by the party and the appellant with regard to the remuneration and resignation were fully authorised by the arrangement and no claim could therefore arise thereform, unless it could be shown that the appellant was in breach of the arrangement. Such is not the case. If on the other hand the arrangement was illegal from its inception as both sides seem to think, and so do we, the respondent should not be entitled to the claim also because the Court will not lend its aid to an illegal transaction. Even the respondent's ignorance of the illegality cannot help him to succeed in his claim, because the law gives no allowance for ignorance when the arrangement is illegal from its inception. Further the appellant as a defendant is allowed by the law to rely upon the illegality in order to reject the respondent's claim. In any case no attempt was shown by him or his council that he had nothing to do with the arrangement or that he was an innocent party.

It is true that respondent's case as can be seen from his pleading and submissions by his counsel in the Court below and before us is not founded upon this illegal arrangement but on a quasi-contractual liability and on torts of malicious falsehood or fraudulent misrepresentation and conspiracy; the illegality being contended as having no effect at all on any of his claims. In our view the respondent can succeed and treat the illegal arrangement as having no consequence upon his claims and rely upon those causes of action if - and only if - he can show that the arrangement was from the very beginning to the end a fraud of which he is completely innocent or that the facts constituting his causes of action, i.e quasi-contractual liability and the alleged torts are not inseparable from those which constitute the illegality or that what were done were not done pursuant to the arrangement so as to exclude the operation of the maxim *volenti non fit injuria.* Only in any one of these case can he succeed. We are of the view that he failed to show his case as falling under any of these circumstances. The arrangement is certainly not a fraud and neither are the facts constituting the alleged causes of action separable from those which cause the illegality, non were acts of the appellant done otherwise than in pursuance of the arrangement exclude the maxim *volenti non fit injuria.* Even if we hold that the arrangement was a friendly or gratuitous one, still the respondent is not entitled to recover any claim because of this maxim.

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Also Found at [1982] CLJ 539